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Application Number	10/816,173
Filing Date	04/01/2004
First Named Inventor	James F. Zucherman
Art Unit	3738

Examiner Name

Attorney Docket Number KLYC-01087US1

ENCLOSURES (Check all that apply)

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Fliesler Meyer LLP	Customer No.	23910
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Printed name	Melissa L. Basch		
Date	5-17-05	Reg. No.	56,159

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

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This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application

Inventor(s): Zucherman, et al.

Appl. No.: 10/816,173

Confirm. No.: 7894

Filed: April 1, 2004

Title: CERVICAL INTERSPINOUS PROCESS
DISTRACTION IMPLANT AND
METHOD OF IMPLANTATION

PATENT APPLICATION

Art Unit: 3738

Examiner:

Customer No. 23910

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence is being deposited in the United States Postal Service with sufficient postage as first class mail in an envelope addressed to M/S Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on May 17, 2005.

(Attorney Signature)

Melissa L. Basch, Reg. No. 56,159

Signature Date: May 17, 2005

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. §1.56

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

It is requested that the information identified in this statement be considered by the Examiner and made of record in the above-identified application. This statement is not intended to represent that a search has been made or that the information cited in the statement is, or is considered to be, material to patentability as defined in 37 C.F.R. §1.56. If this is a continuation, divisional or continuation-in-part application, it is understood that the Examiner will consider all information which was considered by the Office in a parent application. MPEP §609. Such information therefore is not listed herein unless it is desired that the information be printed on a patent issuing from the subject application.

Enclosed with this statement are the following:

- ☒ Form PTO-1449. The Examiner is requested to initial the form and return it to the undersigned in accordance with M.P.E.P. §609.
- ☒ The present application is being/was filed after June 30, 2003. In accordance with the pre-official gazette waiver of 37 CFR 1.98 (a)(2)(i) posted at: pac/dapp/opla/preognotice/idswouscopies.htm, copies of cited U.S. patents and publications are not enclosed. However, copies of cited foreign

patent documents and non-patent literature are enclosed in accordance with 37 CFR 1.98(a)(2), as still required, except for those items designated by an asterisk (*), which were previously submitted by the applicant in a parent application, from which benefit under 35 U.S.C. §120 is claimed, with an *Information Disclosure Statement* submitted in the parent application which complies with the September 8, 2000 or subsequent revision of 37 C.F.R. §1.98(a-c), as allowed under 37 C.F.R. §1.98(d)(1).

✓ If any of the cited/submitted documents is in a foreign language, a concise explanation of relevance is provided pursuant to 37 C.F.R. §1.98(a)(3)(i). For foreign language documents cited in a search report by a foreign patent office, the requirement for a concise explanation of relevance is satisfied by the submission herewith of an English language version of the search report. MPEP §609A(3). If a written English-language translation of a non-English language document, or portion thereof, is within the possession, custody or control of, or is readily available to any individual designated in §1.56(c), a copy of the translation accompanies this statement, 37 C.F.R. §1.98(a)(3)(ii), and satisfies the requirement for a concise explanation of relevance, MPEP §609A(3).

— ***PTA Statement under 37 C.F.R. §1.704(d).*** Each item of information contained in the *Information Disclosure Statement* was cited in a communication from a foreign patent office in a counterpart application and this communication was not received by any individual designated in §1.56(c) more than thirty days prior to the filing of the *Information Disclosure Statement*.

This statement should be considered because:

✓ **37 C.F.R. §1.97(b).** This statement qualifies under 37 C.F.R. §1.97, subsection (b) because:

- (1) It is being filed within three months of the filing date of an application other than a continued prosecution application under § 1.53(d);
-- OR --
- (2) It is being filed within 3 months of entry of a national stage;
-- OR --
- (3) It is being filed before the mailing date of the first Office Action on the merits,
-- OR --
- (4) It is being filed before the mailing date of the first Office Action after the filing of a Request for Continued Examination under 37 C.F.R. §1.114.

— **37 C.F.R. §1.97(c).** Although it may not qualify under subsection (b), this statement qualifies under 37 C.F.R. §1.97, subsection (c) because:

- (1) It is being filed before the mailing date of a FINAL Office Action, a Notice of Allowance, or an action that otherwise closes prosecution in the subject application, whichever occurs first.
-- AND (check at least one of the following) --
— (1) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e).
-- OR --
— (2) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).


— **37 C.F.R. §1.97(d).** Although it may not qualify under subsection (b) or (c), this statement qualifies under 37 C.F.R. §1.97, subsection (d) because:

- (1) It is being filed on or before payment of the Issue Fee;
-- AND --
- (2) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e);
-- AND --
- (3) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).

✓ **Fee Authorization.** The Commissioner is hereby authorized to charge underpayment of any additional fees or credit any overpayment associated with this communication to Deposit Account No. 06-1325. A duplicate copy of this authorization is enclosed.

Respectfully submitted,

Date: 5-17-05

By: 
Melissa L. Basch
Reg. No. 56,159

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San Francisco, California 94111-4156
Telephone (415) 362-3800


— 37 C.F.R. §1.97(d). Although it may not qualify under subsection (b) or (c), this statement qualifies under 37 C.F.R. §1.97, subsection (d) because:

- (1) It is being filed on or before payment of the Issue Fee;
-- AND --
- (2) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e);
-- AND --
- (3) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).

✓ **Fee Authorization.** The Commissioner is hereby authorized to charge underpayment of any additional fees or credit any overpayment associated with this communication to Deposit Account No. 06-1325. ~~A duplicate copy of this authorization is enclosed.~~

Respectfully submitted,

Date: 5-17-05

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San Francisco, California 94111-4156
Telephone (415) 362-3800

Form PTO-1449

(Substitute)

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICEAttorney Docket Number
KLYC-01087US1Serial/Patent Number
10/816,173INFORMATION DISCLOSURE STATEMENT
BY APPLICANT

(Use several sheets if necessary)

Applicant/Patent Owner
Zucherman, et al.Filing/Issue Date
April 1, 2004Group Art Unit:
3738

U.S. PATENTS

Examiner Initial		Patent Number	Issue Date	First Named Inventor	Class	Subclass	Filing Date
/PP/	1.	RE. 36,758	06/27/2000	Fitz	623	017	3/16/95
	2.	2,456,806	12/21/48	Wolffe	033	174	01/14/47
	3.	2,677,369	05/04/54	Knowles	128	092	03/26/52
	4.	3,426,364	02/11/69	Lumb	003	001	08/25/66
	5.	3,643,658	02/22/72	Steinemenan	128	920	08/27/69
	6.	3,648,691	03/14/72	Lumb	128	920	02/24/70
	7.	3,867,728	02/25/75	Stubstad	003	001	04/05/73
	8.	3,875,595	04/08/75	Froning	003	001	04/15/74
	9.	4,034,418	07/12/77	Jackson	003	1.911	05/11/76
	10.	4,219,015	08/26/80	Steinemenan	128	92D	04/18/78
	11.	4,309,777	01/12/82	Patil	003	1.91	11/13/80
	12.	4,349,921	09/21/82	Kuntz	003	001	06/16/80
	13.	4,369,769	01/25/83	Edwards	128	069	06/16/80
	14.	4,401,112	08/30/83	Rezaian	128	92B	10/02/81
	15.	4,455,690	06/26/84	Homsy	003	001	11/06/80
	16.	4,479,491	10/30/84	Martin	128	92B	07/26/82
	17.	4,501,269	02/26/85	Bagby	128	96G	02/21/84
	18.	B1 4,502,161	07/25/89	Wall	623	018	08/19/83
	19.	4,553,273	11/19/85	Wu	623	018	11/23/83
	20.	4,554,914	11/26/85	Kapp	128	92C	10/04/83
	21.	4,599,084	07/08/86	Nashef	623	016	05/24/83
	22.	4,599,086	07/08/86	Doty	623	017	06/07/85

U.S. PATENTS							
Examiner Initial		Patent Number	Issue Date	First Named Inventor	Class	Subclass	Filing Date
/PP/	23.	4,604,995	08/12/86	Stephens	128	069	03/30/84
	24.	4,611,582	09/16/86	Duff	128	069	12/27/83
	25.	4,636,217	01/13/87	Ogilvie	623	017	04/23/85
	26.	4,643,178	02/17/87	Nastari	128	092	04/23/84
	27.	4,657,550	04/14/87	Daher	623	017	01/16/86
	28.	4,685,447	08/11/87	Iversen	128	01R	03/25/85
	29.	4,696,290	09/29/87	Steffee	128	069	03/31/86
	30.	4,714,469	12/22/87	Kenna	623	017	02/26/87
	31.	4,743,256	05/10/88	Brantigan	623	017	01/22/87
	32.	4,772,287	09/20/88	Ray	623	017	08/20/87
	33.	4,790,303	12/13/88	Steffee	128	924M	03/11/87
	34.	4,834,757	05/30/89	Brantigan	623	017	03/28/88
	35.	4,878,915	11/07/89	Brantigan	623	017	01/04/89
	36.	4,904,260	02/27/90	Ray	623	017	07/25/88
	37.	4,904,261	02/27/90	Dove	623	017	08/04/88
	38.	4,913,134	04/03/90	Luque	128	069	07/29/88
	39.	4,923,471	05/08/90	Morgan	623	016	10/17/89
	40.	4,932,975	06/12/90	Main	623	017	10/16/89
	41.	4,936,848	06/26/90	Bagby	623	017	09/22/89
	42.	4,946,378	08/07/90	Hirayama	623	017	11/22/88
	43.	4,961,740	10/09/90	Ray	606	061	10/17/88
	44.	4,969,888	11/13/90	Scholten	606	094	02/09/89
	45.	5,011,484	04/30/91	Breard	606	061	10/10/89
	46.	5,015,247	05/14/91	Michelson	606	061	06/13/88
↓	47.	5,015,255	05/14/91	Kuslich	623	017	05/10/89

U.S. PATENTS							
Examiner Initial		Patent Number	Issue Date	First Named Inventor	Class	Subclass	Filing Date
/PP/	48.	5,026,373	06/25/91	Ray	606	061	11/06/89
	49.	5,035,716	07/30/91	Downey	623	017	05/10/90
	50.	5,047,055	09/10/91	Bao	623	017	12/21/90
	51.	5,055,104	10/08/91	Ray	606	061	11/06/89
	52.	5,059,193	10/22/91	Kuslich	606	061	04/19/90
	53.	5,059,194	10/22/91	Michelson	606	061	02/12/90
	54.	5,062,845	11/05/91	Kuslich	606	080	05/10/89
	55.	5,062,850	11/05/91	MacMillan	623	017	01/16/90
	56.	5,074,864	12/24/91	Cozad	606	054	12/21/88
	57.	5,084,049	01/28/91	Asher et al.	606	061	02/08/89
	58.	5,088,869	02/18/92	Greenslade	411	386	01/24/91
	59.	5,092,866	03/03/92	Breard	606	061	02/02/90
	60.	5,105,255	04/14/92	Shannon	357	068	01/10/90
	61.	5,122,130	06/16/92	Keller	606	061	10/25/90
	62.	5,123,926	06/23/92	Pisharodi	623	017	02/22/91
	63.	5,127,912	07/07/92	Ray	606	061	10/05/90
	64.	5,147,404	09/15/92	Downey	623	017	10/24/90
	65.	5,167,662	12/01/92	Hayes	606	061	01/24/92
	66.	5,167,665	12/01/92	McKinney	606	075	12/31/91
	67.	5,180,381	01/19/93	Aust	606	061	09/24/91
	68.	5,192,327	03/09/93	Brantigan	623	017	03/22/91
	69.	5,258,031	11/02/93	Salib	623	017	12/14/92
	70.	5,263,953	11/23/93	Bagby	606	061	12/31/91
	71.	5,275,601	01/04/94	Gogolewski	606	072	09/03/91
↓	72.	5,290,312	03/01/94	Kojimoto	623	017	09/03/91

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Examiner Initial		Patent Number	Issue Date	First Named Inventor	Class	Subclass	Filing Date
/PP/	73.	5,300,073	04/05/94	Ray	606	061	01/28/92
	74.	5,304,178	04/19/94	Stahurski	606	061	05/29/92
	75.	5,306,275	04/26/94	Bryan	606	061	12/31/92
	76.	5,306,309	04/26/94	Wagner	623	017	05/04/92
	77.	5,352,225	10/04/94	Yuan	606	061	01/14/93
	78.	5,366,455	11/22/94	Dove	606	061	11/02/89
	79.	5,387,213	02/07/95	Breard	606	061	08/20/93
	80.	5,390,683	02/21/95	Pisharodi	128	898	02/21/92
	81.	5,391,168	02/21/95	Sanders	606	061	04/01/93
	82.	5,395,372	03/07/95	Holt	606	061	09/07/93
	83.	5,415,661	05/16/95	Holmes	606	069	03/24/93
	84.	5,437,672	08/01/95	Alleyne	606	061	08/26/94
	85.	5,443,514	08/22/95	Steffee	623	017	10/01/93
	86.	5,454,812	10/03/95	Lin	606	061	11/14/94
	87.	5,456,722	10/10/95	McLeod	623	013	07/30/93
	88.	5,458,638	10/17/95	Kuslich	623	017	11/06/92
	89.	5,458,641	10/17/95	Ramirez Jimenez	623	017	09/08/93
	90.	5,458,643	10/17/95	Oka	623	018	02/01/94
	91.	5,468,242	11/21/95	Reisberg	606	069	11/19/93
	92.	5,470,333	11/28/95	Ray	606	061	06/10/93
	93.	5,491,882	02/20/96	Walston	029	419.1	09/13/94
	94.	5,496,318	03/05/96	Howland	606	061	08/18/93
	95.	5,505,732	04/09/96	Michelson	606	061	06/07/95
	96.	5,507,745	04/16/96	Logroscino	606	061	02/18/94
↓	97.	5,507,823	04/16/96	Walston	623	021	09/15/94

U.S. PATENTS							
Examiner Initial		Patent Number	Issue Date	First Named Inventor	Class	Subclass	Filing Date
/PP/	98.	5,514,180	05/07/96	Heggeness	623	017	01/14/94
	99.	5,527,312	06/18/96	Ray	606	061	08/19/94
	100.	5,531,747	07/02/96	Ray	606	061	05/30/95
	101.	5,534,028	07/09/96	Bao	623	017	04/20/93
	102.	5,534,029	07/09/96	Shima	623	017	12/01/93
	103.	5,540,689	07/30/96	Sanders	606	061	03/21/94
	104.	5,549,679	08/27/96	Kuslich	623	017	03/01/95
	105.	5,554,191	09/10/96	Lahille	623	017	01/23/95
	106.	5,562,736	10/08/96	Ray	623	017	10/17/94
	107.	5,571,191	11/05/96	Fitz	623	017	03/16/95
	108.	5,577,995	11/26/96	Walker	601	120	06/14/93
	109.	5,584,832	12/17/96	Schlapfer	606	061	03/15/93
	110.	5,593,409	01/14/97	Michelson	606	061	02/17/95
	111.	5,601,553	02/11/97	Trebing	606	061	10/03/94
	112.	5,603,713	02/18/97	Aust	606	061	09/29/94
	113.	5,609,634	03/11/97	Voydeville	623	017	06/30/93
	114.	5,616,142	04/01/97	Yuan	606	061	07/20/94
	115.	5,623,984	04/29/97	Nozaki	164	457	06/23/95
	116.	5,628,756	05/13/97	Barker, Jr.	606	139	07/29/96
	117.	5,645,597	07/08/97	Krapiva	623	017	12/29/95
	118.	5,645,599	07/08/97	Samani	623	017	04/22/96
	119.	5,653,761	08/05/97	Pisharodi	623	017	06/07/95
	120.	5,658,286	08/19/97	Sava	606	061	02/05/96
	121.	5,672,177	09/30/97	Seldin	606	071	01/31/96
↓	122.	5,674,295	10/07/97	Ray	623	017	04/26/96

U.S. PATENTS							
Examiner Initial		Patent Number	Issue Date	First Named Inventor	Class	Subclass	Filing Date
/PP/	123.	5,674,296	10/07/97	Bryan	623	017	07/22/96
	124.	5,676,702	10/14/97	Ratron	623	017	12/01/95
	125.	5,702,455	12/30/97	Saggar	623	017	07/03/96
	126.	5,725,582	03/10/98	Bevan	623	017	08/18/93
	127.	5,741,261	04/21/98	Moskovitz	606	079	06/25/96
	128.	5,766,251	06/16/98	Koshino	623	016	11/15/96
	129.	5,766,252	06/16/98	Henry	623	017	01/24/95
	130.	5,800,438	09/01/98	Tuke	606	090	10/22/96
	131.	5,824,098	10/20/98	Stein	623	020	10/03/96
	132.	5,836,948	11/17/98	Zucherman	606	061	01/02/97
	133.	5,860,977	01/19/99	Zucherman	606	061	10/27/97
	134.	5,865,846	02/02/99	Bryan	623	017	05/15/97
	135.	5,876,402	03/02/99	Errico	606	061	03/29/96
	136.	5,876,404	03/02/99	Zucherman	606	061	08/25/98
	137.	5,879,396	03/09/99	Walston	623	021	04/25/97
	138.	5,885,299	03/23/99	Winslow	606	099	03/14/96
	139.	5,888,224	03/30/99	Beckers	627	017	09/05/97
	140.	5,888,226	03/30/99	Rogozinski	623	017	11/12/97
	141.	5,951,555	09/14/99	Rehak	606	061	03/27/96
	142.	5,976,186	11/02/99	Bao	623	017	06/25/96
	143.	6,001,130	12/14/99	Bryan	623	017	10/06/97
	144.	6,022,376	02/08/2000	Assell	623	017	03/16/98
	145.	6,030,162	02/29/2000	Huebner	411	413	12/18/98
	146.	6,045,554	04/04/2000	Grooms	606	073	06/17/98
↓	147.	6,048,204	04/11/2000	Klardie	433	174	12/22/98

U.S. PATENTS							
Examiner Initial		Patent Number	Issue Date	First Named Inventor	Class	Subclass	Filing Date
/PP/	148.	6,048,342	04/11/2000	Zucherman	606	061	1027/98
	149.	6,048,344	04/11/2000	Schenk	606	073	11/17/98
	150.	6,068,630	05/30/2000	Zucherman	606	061	10/20/98
	151.	6,099,531	08/08/2000	Bonutti	606	087	08/20/98
	152.	6,113,639	09/05/2000	Ray	623	17.16	03/23/99
	153.	6,129,730	10/10/2000	Bono	606	073	02/10/99
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